City of Lafayette Staff Report

For:	City Council
By:	Lindy Coburn, Associate Planner
Date Written:	May 21, 2008
Meeting Date:	June 9, 2008
Subject:	Agreement for Installation and Maintenance of Existing and New Landscaping between Michael & Kinney Edlinger and the City of Lafayette, located at 1749 Springbrook Rd, APN 177-130-006.

Introduction

The attached Agreement for Installation and Maintenance of Existing and New Landscaping between Michael & Kinney Edlinger and the City of Lafayette was a condition of approval for HDP89-05. The attached agreement meets the requirement for approval.

Fiscal Impact

None

Recommendation

Accept Agreement for Installation and Maintenance of Existing and New Landscaping and authorize the City Clerk to accept and record.

Attachments:

- Agreement for Installation and Maintenance of Existing and New Landscaping

11C

Record at the request of City of Lafayette
Return to:
City of Lafayette
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549

AGREEMENT FOR INSTALLATION AND MAINTENANCE OF EXISTING AND NEW LANDSCAPING

THIS AGREEMENT is made this _____ day of _____, _____, between Michael & Kinney Edlinger hereafter referred to as "Property Owner," and the CITY OF LAFAYETTE, a Municipal Corporation, hereafter referred to as "City."

RECITALS

THIS AGREEMENT is based upon the following facts:

1. Property Owner is the owner of real property in the City of Lafayette, 1749 Springbrook Road, (Assessor's Parcel Number 177-130-006) described in Exhibit "A" attached to this Agreement and made a part of it by this reference;

2. On January 24, 2006, the City granted a Hillside Development Permit to the Property Owner in accordance with the zoning ordinance of the City of Lafayette.

3. By the terms of the Hillside Development Permit, the Property Owner is required to install and maintain landscaping in accordance with a plan approved by the City on January 4, 2006, a copy of which is on file in the City Office to which reference is made for further particulars;

4. Both parties recognize that the installation and maintenance of landscaping is an integral part of the Property Owner's plan for development of the property, and is necessary to carry out the purpose and intent of the City's Land Use regulations, and that the development would not have been approved by City without the assurance that this Agreement would be executed by Property Owner.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES, as follows:

1. PURPOSE. The purpose of this Agreement is to assure (a) installation of the landscaping in accordance with landscape plan previously approved by the City and (b) continued maintenance and care of the existing landscaping.

2. PROPERTY SUBJECT TO AGREEMENT. The property which is the subject of this Agreement is described in Exhibit "A" which is attached to this Agreement and incorporated in it by this reference.

3. CITY PROCEEDINGS. Reference is made to the Design Review Commission proceedings conducted by the City (Planning File No. HDP89-05) and the landscaping plan for the property, a copy of which is on file in the City Offices.

4. LANDSCAPING AS A BENEFIT. City agrees that the landscaping which he/she is obligated to provide will materially benefit his/her property and is necessary to comply with the 26 condition(s) imposed by the City as a requirement of the development of the property.

5. DUTY TO INSTALL AND MAINTAIN LANDSCAPING. City agrees to complete the installation of the approved landscaping prior to final building inspection approval, and diligently to maintain and care for the landscaping which he/she installs, using generally accepted methods of cultivation and watering. City shall maintain that standard care necessary to prevent the landscaping from deteriorating to the extent that its value as landscaping is destroyed.

6. OWNER MAY MAINTAIN LANDSCAPING. City agrees that if he/she fails to meet the standard of maintenance necessary to keep the landscaping in a healthy condition, the Property Owner will give written notice of the deficiency to the City who shall have 20 days to make the necessary correction, and if the correction is not made within 20 days the Property Owner may elect to take the steps necessary to assure that the landscaping is maintained and cared for. To do this, the Property Owner shall service a notice of its intent to enter the premises for this purpose. The Property Owner shall either personally serve the notice upon the City or mail a copy of it by Certified Mail at the City's last known address, or as shown on the tax rolls at least 15 days in advance of the date when it intends to enter the premises. For this purpose, the Property Owner may enter upon the property and perform such work as it considers reasonably necessary and proper to restore and maintain the landscaping. The Property Owner may act either through its own employees or through an independent contractor.

7. CITY'S COSTS OF MAINTENANCE A LIEN. If the Property Owner incurs costs in restoring or maintaining the landscaping after following the procedure set forth in Paragraph 6 above, the Property Owner shall make demand on the City for payment, if the City fails to pay the costs incurred by the Property Owner within 30 days of the date demand was made, the Property Owner may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the Property Owner has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 7 percent a year until paid.

8. ADDITIONAL REMEDIES. The Owner may as an alternative to the lien procedure set forth above in Paragraph 7, bring legal action to collect the sums due as the result of making of expenditures for restoration and maintenance of the landscaping. The City agrees that if legal action by the Owner is necessary to collect the amount expended by the Owner, the City agrees to pay the Property Owner a reasonable sum as attorney's fees and court costs, together with interest from the date which is 30 days after the City has given its notice, under Paragraph 6 above.

9. NOTICES. Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed to the Planning Services Manager, City of Lafayette, 3675 Mt. Diablo Boulevard, Suite 210, Lafayette, CA 94549. Notices to the Property Owner shall be addressed to him/her at the following address:

Michael & Kinney Edlinger
1749 Springbrook Road
Lafayette, CA 94549

When Property Owner ceases to be the owner, he/she may file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so, the subsequent Grantee is charged with the obligation under this Agreement.

10. MISCELLANEOUS TERMS AND PROVISIONS:
(a) If any provision of this contract is adjusted invalid, the remaining provisions of it are not affected.
(b) Notice to Property Owner shall be considered to have been given to him/her when sent to his/her address above stated.
(c) This writing contains a full, final and exclusive statement of the contract of the parties.
(d) City appoints the Property Owner as his/her Attorney-in-fact, to do all acts and things which the Owner considers necessary to restore or maintain the landscaping approved under the Design Review Commission proceedings.
(e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.
(f) The obligations upon the owner signing this Agreement terminates personally as to him/her when he/she conveys his/her interest in the property and files for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner(s) takes title subject to the requirements of this agreement.

11. AGREEMENT ATTACHES TO LAND. This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

12. CITY MAY REQUIRE ADDITIONAL SECURITY. If upon execution of this Agreement or during the course of performance the City considers that it is necessary to have the Property Owner post additional security to guarantee the performance of his/her obligations, the City may require the Property Owner to post additional security. The City may require either a cash deposit or a surety bond guaranteeing performance, signed by sureties, and in a form deemed satisfactory to the City. The condition of the security shall be that if the Property Owner fails to perform his/her obligations under this Agreement, the City may in the case of a surety bond require the sureties to perform the obligations of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETE:

_____

Mayor, City of Lafayette

ATTEST:

_____

City Clerk

PROPERTY OWNER(S):

_____

Michael Edlinger, Property Owner

_____

Kinney Edlinger, Property Owner

NOTE: Property Owner's signature(s) must be notarized on a separate notary sheet. Signatures must match letter-for-letter with printed name on this agreement.

ATTACHMENTS: Exhibit "A" Legal Description

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Contra Costa }

On May 20, 2008 (Date) before me, Joanne Lee Robbins, notary, (Here Insert Name and Title of the Officer)
personally appeared Michael Edlinger and Kinney Edlinger (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Signature of Notary Public)

ESI1 JOANNE LEE ROBBINS COMM. #1551436 Notary Public-California CONTRA COSTA COUNTY My Comm. Exp. Feb 10, 2009 ESI1

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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SCHEDULE A

Order No: 616851 BLQ Your Ref:

1. The estate or interest in the land hereinafter described or referred to covered by this report is:

A FEE

2. Title to said estate or interest at the date hereof is vested in:

THEODORE W. KRETSCHMER AND DIANE Y. KRETSCHMER, HUSBAND AND WIFE, AS JOINT TENANTS

3. The land referred to in this report is situated in the State of California, County of Contra Costa and is described as follows:

CITY OF LAFAYETTE

LOT 98, AS SHOWN ON THE MAP ENTITLED "TRACT 2121, CONTRA COSTA COUNTY, CALIFORNIA", FILED ON DECEMBER 29, 1954 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, IN BOOK 56 OF MAPS, AT PAGE 44, ET SEQ.

ASSESSOR'S PARCEL NO. 177-130-006